

REMARKS

In the above-identified Office Action, claims 1-22 were rejected under 35 U.S.C. §103 as being unpatentable over Edelson (U.S. Patent No. 4,985,952) in view of Dionne et al (U.S. Patent No. 5,645,494). In response, Applicant has cancelled claim 2, and amended independent claim 1 to include the recitations of claim 2. Reexamination of the application, as amended, is respectfully requested.

PRIORITY

The Office Action provided a paragraph regarding priority under 35 U.S.C. §120. The paragraph indicated that specific reference to the earlier filed application must be made in the instant application. However, Applicant notes that in the instant application a Related Application section before the Background of the Invention is provided, specifically referring to Provisional Application Serial Nos. 60/177,512, and 60/229,868, from which this application claims priority. If additional information is required to meet the requirements of 35 USC §120, Applicant requests that the Examiner contact the undersigned attorney by telephone.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

All claims 1-22 were rejected as being obvious over the combination of Edelson and Dionne. The Edelson reference relates to a mattress, mat, couch, or ottoman having four rectangular cushion sections that are flexibly interconnected along certain of their top and bottom edges by hinges so that the mattress-like article can be folded and compactly stored. The Office

Action asserted that the mattress-like article of Edelson contributes to the obviousness of the present invention as the article has an upper and lower surface and four equal quadrants in a rectangular configuration adjacent to each other.

However, the independent claims 1, 11 and 18 of the present application recite a patterned design defining a longitudinal axis substantially extending the length of and bisecting the upper surface, and a transverse axis bisecting the longitudinal axis to create four equal quadrants. The creases formed at the hinged sections of the mattress-like article of Edelson where the cushions are to be folded are not taught nor even suggested to comprise a patterned design, or a symmetrical body placement guide configured to aid a yoga practitioner to properly align the practitioner's body during yoga postures. In fact, the Edelson reference is completely devoid of any teaching or suggestion that the mattress be used as a yoga mat. Accordingly, Applicant views the Edelson reference as non-analogous art and an improper reference used against the present invention.

The Dionne reference teaches of an instructional golf mat which is useful for efficiently practicing the fundamentals of a golf swing, including ball placements, foot position, golf club swing path and tee height. As described in column 3 of the reference, the golf mat includes a base 20 comprised of a pliable material which can be rolled up during transport. The base 20 includes a circumferential beveled edge 26 to prevent tripping which might otherwise occur due to the fact that golfers wear spiked shoes. A center layer 22 overlies the base 20 and serves as a shock absorber to simulate the "giving" nature of a golf course fairway or rough. A top surface 24 includes

artificial turf surface or other material simulating grass on a golf course. A grid pattern 30 is imprinted on the top surface 24 and includes horizontal lines 31, vertical lines 32, reference lines 33 and 34, reference arrows 36 imprinted around the circumference of the grid, a highlighted horizontal center line 40 and a highlighted vertical center line 42. The reference arrows 36 serve as reference points for foot stance and ball placement, and the other lines comprising the grid are useful for examining proper swing path, etc.

The Dionne reference includes no teaching or even suggestion that the golf mat be used as a yoga mat, or include symmetrical body placement guide on the upper surface thereof configured to aid a yoga practitioner to properly align the practitioner's body during yoga postures. In fact, Applicant believes that it would be patently absurd to utilize such a golf mat in a yoga setting.

Moreover, all independent claims 1, 11 and 18 include recitations of indicia positioned from the longitudinal axis at a 45° angle. The golf mat of Dionne is devoid of such structure. Independent claims 11 and 18 further recite that the patterned design includes indicia positioned from the transverse axis at a 45° angle. The Dionne reference is completely devoid of such structure. Also, claims 8, 15 and 18 recite that the pattern design includes step indicia within each quadrant. Applicant is unable to find such step indicia in the golf mat. Further, claims 3, 5, 12 and 19 recite lines extending from the longitudinal and transverse axis at a 45° angle. Although the Office Action asserted that line 40 in the Dionne reference comprised such a 45° angled line, in fact, as described above, line 40 is described as a highlighted horizontal center line (column 4, line 2). The reality is that the

Dionne reference includes no discernable indicia or lines positioned at 45° angles from either the horizontal or vertical center lines 40 and 42.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious, rather the test is considered whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021 (Fed. Cir. 1984). The invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959 (Fed. Cir. 1988). The present invention, taken and considered as a whole, relates to yoga mats. The independent claims include recitations of a symmetrical body placement guide on the upper surface of the mat and configured to aid a yoga practitioner to properly align the practitioner's body during yoga postures. The cited references do not embrace this property and do not address the problem that the present invention solves.

The mere fact that a prior art structure could be modified to produce the claimed invention would not have made the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 23 USPQ 2d 1780 (Fed. Cir. 1992). As is well-known, hindsight is strictly forbidden. It is impermissible to use the claims as a framework from which to pick and choose among individual references to recreate the claimed invention. In re Fine, 5 USPQ 2d at 1600. Applicant believes that impermissible hindsight was used in reconstructing non-analogous references that should not have been combined in an attempt to reject the claims of the present application.

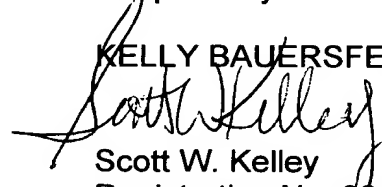
It is also well-known that it is impermissible within the framework of 35 U.S.C. §103 to pick and choose from a reference only so much of it as will support a conclusion of obviousness to the exclusion of other parts necessary to a full appreciation of what the reference fairly suggests to one skilled in the art. Bausch & Lomb v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416 (Fed. Cir. 1986). The courts have long cautioned that consideration must be given "where the reference is diverge and teach away from the claimed invention." Akzo N.V. v. International Trade Commissioner, 1 USPQ 2d 1241, 1246 (Fed. Cir. 1986). Applicant believes that the cited references teach away from the claimed invention by disclosing a hinged mattress, and an instructional golf mat. In fact, the teachings of the references can be combined only if there is some suggestion or incentive in the prior art to do so. In re Fine, 5 USPQ 2d 1596 (Fed. Cir. 1988). Applicant fails to see the incentive to make the combination offered in the Office Action. While Edelson teaches of a mattress comprised of four rectangular cushion sections hinged to one another so as to be folded and compactly stored, the Dionne reference teaches of an instructional golf mat, which is rolled up during transport (Column 3, lines 5-7). Also, neither reference provides any teaching whatsoever to yoga mats, or a symmetrical body placement guide on the upper surface of the mat, as claimed in the present invention.

CONCLUSION

Applicant believes that the foregoing amendments and argument distinguish the claims of the present invention from the prior art references. Accordingly, Applicant believes that all pending claims 1, and 3-22 are in condition for allowance, notice of which is hereby respectfully requested.

Respectfully submitted,

KELLY BAUERSFELD LOWRY & KELLEY, LLP



Scott W. Kelley
Registration No. 30,762

SWK:kr
6320 Canoga Avenue, Suite 1650
Woodland Hills, California 91367 (818) 347-7900

CLEAN VERSION OF ALL PENDING CLAIMS

1. A yoga mat, comprising:
an elongated mat having an upper surface and a lower surface; and
a symmetrical body placement guide on the upper surface of the mat
and configured to aid a yoga practitioner to properly align the practitioner's
body during yoga postures, the body placement guide including:
a patterned design defining a longitudinal axis substantially extending
the length of and bisecting the upper surface, the patterned design further
defining a transverse axis bisecting the longitudinal axis, and indicia
positioned from the longitudinal axis at a forty-five degree angle; and
four equal quadrants defined by the longitudinal axis and the
transverse axis, each quadrant being adjacent to two other quadrants, the
patterned design in each quadrant being a mirror image of the patterned
design of the two adjoining quadrants.
3. The yoga mat of claim 1, wherein the indicia comprises a line
extending from the longitudinal axis at a forty-five degree angle.
4. The yoga mat of claim 1, wherein the patterned design includes
indicia positioned from the transverse axis at a forty-five degree angle.
5. The yoga mat of claim 4, wherein the indicia comprises a line
extending from the transverse axis at a forty-five degree angle.
6. The yoga mat of claim 1, wherein the patterned design defines
multiple segments of equal area parallel to the transverse axis.
7. The yoga mat of claim 1, wherein the patterned design defines
multiple segments of equal area parallel to the longitudinal axis.
8. The yoga mat of claim 1, wherein the patterned design includes
step indicia within each quadrant.
9. The yoga mat of claim 8, wherein the step indicia are created by
intersecting lines forming a ninety degree angle.

10. The yoga mat of claim 1, wherein the elongated mat has a rectangular configuration.

11. A yoga mat, comprising:

an elongated mat having an upper surface and a lower surface; and
a symmetrical body placement guide on the upper surface of the mat and configured to aid a yoga practitioner to properly align the practitioner's body during yoga postures, the body placement guide including:

a patterned design defining a longitudinal axis substantially extending the length of and bisecting the upper surface, the patterned design further defining a transverse axis bisecting the longitudinal axis; and

four equal quadrants defined by the longitudinal axis and the transverse axis, each quadrant being adjacent to two other quadrants, the patterned design in each quadrant being a mirror image of the patterned design of the two adjoining quadrants;

wherein the patterned design includes indicia positioned from the longitudinal axis at a forty-five degree angle; and

wherein the patterned design includes indicia positioned from the transverse axis at a forty-five degree angle.

12. The yoga mat of claim 11, wherein the indicia extending from the longitudinal axis and transverse axis at a forty-five degree angle comprise lines.

13. The yoga mat of claim 11, wherein the patterned design defines multiple segments of equal area parallel to the transverse axis.

14. The yoga mat of claim 11, wherein the patterned design defines multiple segments of equal area parallel to the longitudinal axis.

15. The yoga mat of claim 11, wherein the patterned design includes step indicia within each quadrant.

16. The yoga mat of claim 15, wherein the step indicia are created by intersecting lines forming a ninety degree angle.

17. The yoga mat of claim 1, wherein the elongated mat has a rectangular configuration.

18. A yoga mat, comprising:

an elongated mat having a rectangular configuration, an upper surface and a lower surface; and

a symmetrical body placement guide on the upper surface of the mat and configured to aid a yoga practitioner to properly align the practitioner's body during yoga postures, the body placement guide including:

a patterned design defining a longitudinal axis substantially extending the length of and bisecting the upper surface, the patterned design further defining a transverse axis bisecting the longitudinal axis; and

four equal quadrants defined by the longitudinal axis and the transverse axis, each quadrant being adjacent to two other quadrants, the patterned design in each quadrant being a mirror image of the patterned design of the two adjoining quadrants;

wherein the patterned design includes indicia positioned from the longitudinal axis at a forty-five degree angle;

wherein the patterned design includes indicia positioned from the transverse axis at a forty-five degree angle; and

wherein the patterned design includes step indicia within each quadrant.

19. The yoga mat of claim 18, wherein the indicia extending from the longitudinal axis and transverse axis at a forty-five degree angle comprise lines.

20. The yoga mat of claim 18, wherein the patterned design defines multiple segments of equal area parallel to the transverse axis.

21. The yoga mat of claim 18, wherein the patterned design defines multiple segments of equal area parallel to the longitudinal axis.

22. The yoga mat of claim 18, wherein the step indicia are created by intersecting lines forming a ninety degree angle.